

FIRST REGULAR SESSION

SENATE BILL NO. 259

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ENGLER.

Read 1st time January 11, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

1287S.011

AN ACT

To repeal section 339.100, RSMo, and to enact in lieu thereof one new section relating to real estate broker contributions, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 339.100, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 339.100, to read as follows:

339.100. 1. The commission may, upon its own motion, and shall upon
2 receipt of a written complaint filed by any person, investigate any real
3 estate-related activity of a licensee licensed under sections 339.010 to 339.180
4 and sections 339.710 to 339.860 or an individual or entity acting as or
5 representing themselves as a real estate licensee. In conducting such
6 investigation, if the questioned activity or written complaint involves an affiliated
7 licensee, the commission may forward a copy of the information received to the
8 affiliated licensee's designated broker. The commission shall have the power to
9 hold an investigatory hearing to determine whether there is a probability of a
10 violation of sections 339.010 to 339.180 and sections 339.710 to 339.860. The
11 commission shall have the power to issue a subpoena to compel the production of
12 records and papers bearing on the complaint. The commission shall have the
13 power to issue a subpoena and to compel any person in this state to come before
14 the commission to offer testimony or any material specified in the
15 subpoena. Subpoenas and subpoenas duces tecum issued pursuant to this section
16 shall be served in the same manner as subpoenas in a criminal case. The fees
17 and mileage of witnesses shall be the same as that allowed in the circuit court in
18 civil cases.

19 2. The commission may cause a complaint to be filed with the
20 administrative hearing commission as provided by the provisions of chapter 621,

21 RSMo, against any person or entity licensed under this chapter or any licensee
22 who has failed to renew or has surrendered his or her individual or entity license
23 for any one or any combination of the following acts:

24 (1) Failure to maintain and deposit in a special account, separate and
25 apart from his or her personal or other business accounts, all moneys belonging
26 to others entrusted to him or her while acting as a real estate broker or as the
27 temporary custodian of the funds of others, until the transaction involved is
28 consummated or terminated, unless all parties having an interest in the funds
29 have agreed otherwise in writing;

30 (2) Making substantial misrepresentations or false promises or
31 suppression, concealment or omission of material facts in the conduct of his or her
32 business or pursuing a flagrant and continued course of misrepresentation
33 through agents, salespersons, advertising or otherwise in any transaction;

34 (3) Failing within a reasonable time to account for or to remit any moneys,
35 valuable documents or other property, coming into his or her possession, which
36 belongs to others;

37 (4) Representing to any lender, guaranteeing agency, or any other
38 interested party, either verbally or through the preparation of false documents,
39 an amount in excess of the true and actual sale price of the real estate or terms
40 differing from those actually agreed upon;

41 (5) Failure to timely deliver a duplicate original of any and all
42 instruments to any party or parties executing the same where the instruments
43 have been prepared by the licensee or under his or her supervision or are within
44 his or her control, including, but not limited to, the instruments relating to the
45 employment of the licensee or to any matter pertaining to the consummation of
46 a lease, listing agreement or the purchase, sale, exchange or lease of property, or
47 any type of real estate transaction in which he or she may participate as a
48 licensee;

49 (6) Acting for more than one party in a transaction without the knowledge
50 of all parties for whom he or she acts, or accepting a commission or valuable
51 consideration for services from more than one party in a real estate transaction
52 without the knowledge of all parties to the transaction;

53 (7) Paying a commission or valuable consideration to any person for acts
54 or services performed in violation of sections 339.010 to 339.180 and sections
55 339.710 to 339.860;

56 (8) Guaranteeing or having authorized or permitted any licensee to

57 guarantee future profits which may result from the resale of real property;

58 (9) Having been finally adjudicated and been found guilty of the violation
59 of any state or federal statute which governs the sale or rental of real property
60 or the conduct of the real estate business as defined in subsection 1 of section
61 339.010;

62 (10) Obtaining a certificate or registration of authority, permit or license
63 for himself or herself or anyone else by false or fraudulent representation, fraud
64 or deceit;

65 (11) Representing a real estate broker other than the broker with whom
66 associated without the express written consent of the broker with whom
67 associated;

68 (12) Accepting a commission or valuable consideration for the performance
69 of any of the acts referred to in section 339.010 from any person except the broker
70 with whom associated at the time the commission or valuable consideration was
71 earned;

72 (13) Using prizes, money, gifts or other valuable consideration as
73 inducement to secure customers or clients to purchase, lease, sell or list property
74 when the awarding of such prizes, money, gifts or other valuable consideration
75 is conditioned upon the purchase, lease, sale or listing; or soliciting, selling or
76 offering for sale real property by offering free lots, or conducting lotteries or
77 contests, or offering prizes for the purpose of influencing a purchaser or
78 prospective purchaser of real property. **Cash contributions by a real estate
79 broker to an account held in the name of a purchaser or seller of real
80 estate shall not be deemed to be a prohibited act under this section
81 when such a contribution is made for the purpose of helping families
82 fund educational expenses;**

83 (14) Placing a sign on or advertising any property offering it for sale or
84 rent without the written consent of the owner or his or her duly authorized agent;

85 (15) Violation of, or attempting to violate, directly or indirectly, or
86 assisting or enabling any person to violate, any provision of sections 339.010 to
87 339.180 and sections 339.710 to 339.860, or of any lawful rule adopted pursuant
88 to sections 339.010 to 339.180 and sections 339.710 to 339.860;

89 (16) Committing any act which would otherwise be grounds for the
90 commission to refuse to issue a license under section 339.040;

91 (17) Failure to timely inform seller of all written offers unless otherwise
92 instructed in writing by the seller;

93 (18) Been finally adjudicated and found guilty, or entered a plea of guilty
94 or nolo contendere, in a criminal prosecution under the laws of this state or any
95 other state or of the United States, for any offense reasonably related to the
96 qualifications, functions or duties of any profession licensed or regulated under
97 this chapter, for any offense an essential element of which is fraud, dishonesty
98 or an act of violence, or for any offense involving moral turpitude, whether or not
99 sentence is imposed;

100 (19) Any other conduct which constitutes untrustworthy, improper or
101 fraudulent business dealings, demonstrates bad faith or incompetence,
102 misconduct, or gross negligence;

103 (20) Disciplinary action against the holder of a license or other right to
104 practice any profession regulated under sections 339.010 to 339.180 and sections
105 339.710 to 339.860 granted by another state, territory, federal agency, or country
106 upon grounds for which revocation, suspension, or probation is authorized in this
107 state;

108 (21) Been found by a court of competent jurisdiction of having used any
109 controlled substance, as defined in chapter 195, RSMo, to the extent that such use
110 impairs a person's ability to perform the work of any profession licensed or
111 regulated by sections 339.010 to 339.180 and sections 339.710 to 339.860;

112 (22) Been finally adjudged insane or incompetent by a court of competent
113 jurisdiction;

114 (23) Assisting or enabling any person to practice or offer to practice any
115 profession licensed or regulated under sections 339.010 to 339.180 and sections
116 339.710 to 339.860 who is not registered and currently eligible to practice under
117 sections 339.010 to 339.180 and sections 339.710 to 339.860;

118 (24) Use of any advertisement or solicitation which is knowingly false,
119 misleading or deceptive to the general public or persons to whom the
120 advertisement or solicitation is primarily directed.

121 3. After the filing of such complaint, the proceedings will be conducted in
122 accordance with the provisions of law relating to the administrative hearing
123 commission. A finding of the administrative hearing commissioner that the
124 licensee has performed or attempted to perform one or more of the foregoing acts
125 shall be grounds for the suspension or revocation of his license by the
126 commission, or the placing of the licensee on probation on such terms and
127 conditions as the real estate commission shall deem appropriate.

128 4. The commission may prepare a digest of the decisions of the

129 administrative hearing commission which concern complaints against licensed
130 brokers or salespersons and cause such digests to be mailed to all licensees
131 periodically. Such digests may also contain reports as to new or changed rules
132 adopted by the commission and other information of significance to licensees.

133 5. Notwithstanding other provisions of this section, a broker or
134 salesperson's license shall be revoked, or in the case of an applicant, shall not be
135 issued, if the licensee or applicant has pleaded guilty to, entered a plea of nolo
136 contendere to, or been found guilty of any of the following offenses or offenses of
137 a similar nature established under the laws of this, any other state, the United
138 States, or any other country, notwithstanding whether sentence is imposed:

139 (1) Any dangerous felony as defined under section 556.061, RSMo, or
140 murder in the first degree;

141 (2) Any of the following sexual offenses: rape, statutory rape in the first
142 degree, statutory rape in the second degree, sexual assault, forcible sodomy,
143 statutory sodomy in the first degree, statutory sodomy in the second degree, child
144 molestation in the first degree, child molestation in the second degree, deviate
145 sexual assault, sexual misconduct involving a child, sexual misconduct in the first
146 degree, sexual abuse, enticement of a child, or attempting to entice a child;

147 (3) Any of the following offenses against the family and related offenses:
148 incest, abandonment of a child in the first degree, abandonment of a child in the
149 second degree, endangering the welfare of a child in the first degree, abuse of a
150 child, using a child in a sexual performance, promoting sexual performance by a
151 child, or trafficking in children; and

152 (4) Any of the following offenses involving child pornography and related
153 offenses: promoting obscenity in the first degree, promoting obscenity in the
154 second degree when the penalty is enhanced to a class D felony, promoting child
155 pornography in the first degree, promoting child pornography in the second
156 degree, possession of child pornography in the first degree, possession of child
157 pornography in the second degree, furnishing child pornography to a minor,
158 furnishing pornographic materials to minors, or coercing acceptance of obscene
159 material.

160 6. A person whose license was revoked under subsection 5 of this section
161 may appeal such revocation to the administrative hearing commission. Notice of
162 such appeal must be received by the administrative hearing commission within
163 ninety days of mailing, by certified mail, the notice of revocation. Failure of a
164 person whose license was revoked to notify the administrative hearing

165 commission of his or her intent to appeal waives all rights to appeal the
166 revocation. Upon notice of such person's intent to appeal, a hearing shall be held
167 before the administrative hearing commissioner.

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